

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). (This is a GIL).

March 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated January 28, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY has been engaged by our client (hereinafter, the 'Company') to perform a limited multi-state and local tax compliance review. As part of this review, we are seeking to determine how the Illinois Department of Revenue ('Department') applies sales and use tax to certain 'installed sale' transactions. In this letter, the term 'installed sale' refers to any sales in which the Company (sometimes through its unrelated agent or authorized contractor) sells, delivers, and installs tangible personal property on its customer's behalf.

The purpose of this letter is to describe the Company's facts and to request the state's position concerning the issues set forth herein. After you have considered the facts and issues, please provide COMPANY with a ruling determination, complete with any citations to authorities supporting the state's position.

Facts

The Company is a Delaware corporation. The Company sells, installs, and rents tangible personal property at wholesale and retail in Illinois. A portion of the Company's sales in Illinois are made to customers that will have the tangible personal property installed by the Company. Most installed sales are actually installed by independent and unrelated contractors authorized by the Company.

Tangible personal property used to perform a particular 'installed sales' contract is often pulled from an independent installer's inventory for use. The Company is concerned that it may be collecting and/or paying two levels of sales and/or use tax on such sales. For example, if the independent installer uses inventory from their own stock to perform the installation, the Company is concerned that it may be both, (i) paying sales or use tax to the installer (either by

virtue of the installer's billing of sales tax to the Company, or on account of the installer's own payment of use tax then passed through to the Company), and (ii) collecting and remitting sales tax received from the end customer or accruing and remitting use tax on the installation of the tangible personal property.

To resolve this double-tax dilemma, the Company is contemplating the inclusion of a provision in its contracts with independent installers that would contractually place all sales and use tax compliance burdens on the independent installers. In such event, the Company would cease collecting and remitting sales tax from its retail customers, and the independent installers would accrue and pay use tax at the time of installation.

The Company is aware that sales tax should generally be collected on all sales of tangible personal property unless statutory law specifically exempts the sale of such property. Some states specifically exempt installation from sales and use tax. On both a single- and multi-state basis, the application of sales and use taxes in this context (involving independent contractors, retail stores, and end customers) is quite confusing, particularly in light of the special rules that many states apply to contractors. For clarity purposes, we respectfully request your response to the questions listed after the following fact pattern:

Scenario

A customer enters the Company's retail establishment and purchases the installation of tangible personal property. The customer requests that the Company install the tangible personal property. The Company contracts with an independent contractor or agent to complete the installation. The independent contractor or agent maintains their own stock of this type of tangible personal property, removes the tangible personal property from their personal inventory, and installs it for the customer. The Company prepares a sales invoice to bill the end customer. The independent contractor or agent prepares a sales invoice to bill the Company. Both invoices reference the tangible personal property purchased, as well as the installation services.

- Is the independent contractor or agent responsible for paying use tax on tangible personal property removed from their inventory for use in completing the installation?
- Is the end customer required to pay sales tax to the Company on the tangible personal property installed?
- Is the installation service subject to sales tax?
- Should the installation cost be separately stated on the various invoices?

- Can the Company contract with the independent contractor or agent to transfer all sales and use tax compliance requirements to the independent contractor or agent?

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Thank you in advance for your prompt attention to our request for ruling. If you need any additional information or have any questions or comments, please contact me at #####.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not purchase the tangible personal property, then the general contractors cannot be held liable for tax due on another entities' purchases. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed. Their Illinois suppliers and suppliers who are "retailers maintaining a place of business in Illinois" (see discussion below), must retain certificates of resale in order to document the resale exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

ST 99-0092-GIL

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.